

the construction, reconstruction, repair, replacement, relocation, operation or maintenance of a cable system shall be promptly repaired by the franchisee, at its sole expense.

(k) A franchisee shall, by a time specified by the city and at its sole expense, protect, support, temporarily or permanently disconnect, temporarily or permanently remove or relocate, or take other specific action identified by the city with respect to any of its facilities, equipment, fixtures or other property when required by the city by reason of any of the following: traffic conditions; public safety demands; public right-of-way relocation, vacation, construction, regrading, maintenance or repair (including resurfacing or widening); construction undertaken by the city; construction, installation, replacement or repair of, or other work on, sewers, drains, water pipes, power lines, signal lines, tracks or any other type of communications system, public improvement or public utility by the city or any entity providing utility services to residents and businesses of the city; or any other activity undertaken for the general welfare; provided, that the franchisee may, in all such cases, abandon its property in place, so long as the city consents to the abandonment and the abandonment is done in accordance with any terms and conditions established by the city, including the removal of the abandoned property at the franchisee's sole expense.

(l) If a franchisee is required to take action with respect to its property in order to accommodate the construction, operation, maintenance or repair of, or a similar activity involving, the facilities, equipment, fixtures or other property of another person who is authorized to use the public rights-of-way, a franchisee shall take the action requested. The city may resolve disputes between the franchisee and other persons who are authorized to utilize public rights-of-way as to the responsibility for the costs associated with the action undertaken by the franchisee, where the parties are unable to do so themselves and resolution of the dispute is not governed by a contract between the parties or federal or state law or regulation.

(m) In the event of an emergency, or where a cable system creates or is contributing to an imminent danger to health, safety or property, the city may remove, disconnect, relay, repair or relocate, or take any other necessary action with respect to, any or all parts of the cable system without prior notice to the franchisee.

(n) A franchisee shall, on the request of any person holding a permit issued by the city to move a building, temporarily raise or lower its wires and other facilities to permit the moving of the building. The expense of such temporary removal or raising or lowering of facilities shall be borne by the person requesting same, and the franchisee may require such payment in advance,

except in the case where the requesting person is the city, in which case no payment shall be required. The franchisee shall be given at least 48 hours' advance notice of any building movement under this subsection.

(o) A franchisee may trim trees that overhang a public right-of-way so as to prevent the branches of such trees from coming in contact with the wires and cables of its cable system. However, no such tree trimming by a franchisee may take place unless pursuant to a tree trimming plan that has been reviewed and approved by the administrator. Moreover, any such tree trimming may, at the option of the city, be performed by the city itself, and the costs of the trimming shall be paid by the franchisee.

(p) In all areas of the city where electric utility lines or telephone lines, or both, are located overhead, all trunk, feeder, drop cables and lines, and other facilities, associated with a franchisee's cable system may be constructed, and may thereafter continue to be located (except as provided below), overhead. In all areas of the city where electric utility and telephone lines are located underground, all trunk, feeder, and drop cables and lines, and other facilities, associated with a franchisee's cable system shall be constructed, and thereafter shall continue to be located, underground, and any such facilities of the franchisee that are already constructed in said areas shall be relocated underground, and all such undergrounding shall be undertaken at the sole expense of the franchisee. Whenever and wherever electric utility lines and telephone lines are relocated from overhead to underground placement in an area of the city, all cables, lines and other facilities associated with a cable system in the area that are located overhead shall be relocated underground no later than 180 days following the undergrounding of the electric and telephone lines, or by another date determined by the city council.

(q) A franchisee shall use, with the owner's permission, existing underground utility conduits or overhead utility facilities whenever feasible, and shall not erect any poles or other structures or facilities in any public right-of-way without the express permission of the administrator and the director of transportation and environmental services. Copies of agreements for a franchisee's use of underground conduits and overhead utility facilities shall be filed with the administrator, if required by a franchise agreement or upon city request. To the extent and in the manner required by federal or state law, the owners of poles supporting electric, telephone or other utility lines shall make such poles available to a franchisee.

(r) The city shall have the right to install and maintain free of charge upon any poles owned by a franchisee any cables, lines, wires and other fixtures and facilities used for city communications purposes, so long as they do not unreasonably interfere with the operations of the franchisee's cable system.

(s) Except as otherwise provided in a franchise agreement, prior to the construction or installation of any towers, poles, underground conduits or other structures or facilities associated with a cable system, or the construction, upgrade or rebuild of a cable system or any part thereof, a franchisee shall submit to the administrator and any other persons designated by the administrator, for their approval, a concise description of the work to be performed, including engineering drawings and a map and plans indicating the proposed location of all proposed structures and facilities. No construction or installation work shall be commenced by the franchisee until approval therefor has been received from the administrator.

(t) Any contractor or subcontractor who assists in the construction, installation, operation, maintenance or repair of, or who undertakes any other work on a, cable system shall be properly licensed under the laws of the commonwealth and this code. Any such contractor and subcontractor shall perform work in compliance with all applicable provisions of law and any applicable franchise agreement, and the franchisee shall be responsible for ensuring that the work is so performed.

Sec. 9-3-123 Use of public property.

(a) In the event that the location or the grade, line or other characteristic of any public right-of-way that a franchisee is authorized to use and occupy is altered by the city, the franchisee shall, at its sole expense, relocate or otherwise modify its cable system so as to conform to the new location or the new grade, line or other right-of-way characteristic.

(b) In the event that an alteration is made to a sanitary or storm sewer or to any other structure or facility maintained by the city or the Alexandria Sanitation Authority and located in a public right-of-way, the franchisee shall, at its sole expense, relocate or otherwise modify its cable system or any part thereof as necessary to conform to such alteration. If any alternation to such a sanitary or storm sewer or to another structure or facility maintained by the city or the Alexandria Sanitation Authority is required on account of the presence in a public right-of-way of a franchisee's cable system or a part thereof, any such alternation shall be made at the sole expense of the franchisee.

(c) During any work associated with or performed on its cable system, the franchisee shall, at its sole expense, protect and, if damaged, repair any and all existing structures and facilities located within or adjacent to a public right-of-way, regardless of the person owning such structures and facilities.

(d) Any work by a franchisee in a public right-of-way shall be undertaken only after all city approvals have been obtained,

and shall be performed in the manner required by this code and by the city as part of such approvals.

Sec. 9-3-124 Interference with public projects.

Nothing in this chapter shall be construed to interfere with the right of the city and other governmental entities to construct, operate, repair and maintain public improvements and public works of every description, whether or not within a public right-of-way, and, in the event that a cable system interferes or poses a danger of interfering with the construction, operation, repair or maintenance of any public improvement or public works, the franchisee, at its sole expense, either shall undertake such protective measures identified by the city or other governmental entity as necessary to protect such improvement or works, or shall relocate its cable system, or any part thereof, as directed by the city or other governmental entity.

Sec. 9-3-125 Publicizing proposed construction and other work.

A franchisee shall publicize scheduled construction work by causing written notice of such work to be delivered to the administrator at least one week prior to the commencement of the work and by notifying those persons most likely to be affected by the work, by telephone, in person, by mail, by distribution of flyers to residences, or in another manner approved by the administrator that is reasonably calculated to provide adequate notice. In addition, before entering onto any person's property, a franchisee shall make a reasonable effort to contact the property owner or, in the case of residential property, the property's occupant; provided that, if a franchisee must enter a single family home or another structure used as a person's residence (e.g., a condominium or apartment), it shall schedule an appointment to do so at the convenience of the owner or occupant.

Sec. 9-3-126 Continuity of service.

(a) It is the right of all subscribers located in a franchisee's franchise area to receive all available services from the franchisee, so long as their financial and other obligations to the franchisee are satisfied.

(b) A franchisee shall ensure that all subscribers receive continuous uninterrupted service. At the city's request, a franchisee shall continue to operate its cable system for a temporary period (the "transition period") whenever necessary following the termination, sale or transfer of its franchise to maintain service to subscribers, and it shall cooperate with the city to ensure an orderly transition to another franchisee. The transition period shall be no longer than the reasonable period required for the selection of another franchisee and the construction of a replacement system, and shall be no longer than

36 months, unless extended by the city for good cause. During such transition period, a franchisee shall continue to be obligated to comply with the terms and conditions of its franchise agreement, this chapter and other applicable laws and regulations.

(c) If a franchisee abandons its cable system during the term of its franchise, or fails to operate its system in accordance with the terms of its franchise agreement and this chapter during the term of its franchise or any transition period, the city may, at its option, operate the system, designate another entity to operate the system temporarily until the franchisee restores service under conditions acceptable to the city or until the franchise is revoked and a new franchisee is providing service, or obtain an injunction requiring the franchisee to continue operations. If the city is required to operate or designate another entity to operate the cable system, the franchisee shall reimburse the city or its designee for all reasonable costs and damages incurred that are in excess of the revenues derived from the operation of the cable system.

(d) The city shall be entitled to injunctive relief under the preceding subsection if:

(1) The franchisee fails to provide cable service in accordance with its franchise and franchise agreement for more than 20 percent of the franchise area for 96 consecutive hours, unless the city authorizes a longer interruption of service; or

(2) The franchisee, for any period following notice from the city, willfully and without cause refuses to provide cable service in accordance with its franchise and franchise agreement over any portion of the franchise area.

ARTICLE J

Operation and Reporting Provisions

Sec. 9-3-151 *Open books and records.*

(a) The city shall have the right, upon 24 hours written notice, to inspect and copy, during normal business hours and at such location as the city may designate, all books, receipts, maps, plans, financial statements, contracts, service complaint logs, performance test results, records of requests for service, computer records, codes, programs, disks and other storage media, and other like materials which may be relevant to the franchisee's compliance with the requirements and obligations imposed upon it by this chapter, a franchise agreement or applicable law. The right of the city under this section to inspect extends to the materials identified above that are in the possession or under the control of the franchisee, of an affiliate of the franchisee, and of any other person responsible

for managing and administering the cable system. The franchisee is responsible for collecting the materials covered by this section and producing it at the location designated by the city or, in the case of materials meeting the requirements of section 9-3-156, at its option, for paying all costs incurred by the city in inspecting the materials where they are located. Upon a request for confidentiality by franchisee, information obtained by the city pursuant this section shall be made available only to persons needing access to the materials in order to perform their responsibilities on behalf of or for the city and, as to all other persons, shall, to the extent permitted by law, be treated as confidential.

(b) A franchisee shall maintain separate financial records governing its operations in the franchise area.

(c) Access to a franchisee's records shall not be denied by the franchisee on the basis that said records contain "proprietary" information. A franchisee's refusal to provide information required under this section to the city shall be grounds for revocation of the franchise.

(d) A franchisee shall maintain a file of the records that are to be open to public inspection under FCC rules and regulations.

Sec. 9-3-152 *Communication with regulatory agencies.*

Upon request by the administrator, a franchisee shall file with the administrator, in a form acceptable to the administrator, all reports required by the FCC, including, but not limited to, proof of performance test results, equal employment opportunity reports and all petitions, applications and communications of all types regarding the cable system, or a group of cable systems of which the franchisee's cable system is a part, submitted or received by the franchisee, an affiliate or any other person on the behalf of the franchisee, either to or from the FCC, the Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the franchisee's system. Public access to such reports received by the city shall not be denied.

Sec. 9-3-153 *Reports.*

(a) Annual report. No later than 90 days following the close of its fiscal year, a franchisee shall submit a written report to the city council, in a form directed by the administrator. The report shall be presented at a regular meeting of the council no earlier than 10 days following submission of the report. The report shall include the following information pertaining to the franchisee's immediately preceding fiscal year:

(1) a summary of the year's activities in the development of the cable system, including but not limited to services begun or discontinued and subscribers gained or lost;

(2) a summary of the year's complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions;

(3) an audited and certified financial report for the year, including the following: a year-end balance sheet; an income statement showing gross revenues for the year, subscriber revenue from each category of service and non-subscriber revenue from each source, line item operating expenses, depreciation expense, interest expense and taxes paid; a statement of cash flows; and a depreciation schedule;

(4) a statement of all capital expenditures, including for construction and equipment, made during the year;

(5) a statement of construction plans and major equipment expenditures for the current and the next fiscal years;

(6) an ownership report, indicating all persons who at any time during the year held an ownership interest in the franchisee of five percent or more;

(7) a list of the individuals who served during the year as officers and as members of the board of directors of the franchisee;

(8) an organizational chart (i) identifying all persons with more than a five percent ownership interest in the franchisee and stating, for each such person, its legal form (e.g., corporation, limited liability company, partnership, natural person), and (ii) for each person with more than a thirty-three percent ownership interest in the franchisee, identifying all persons with more than a thirty-three (33) percent interest in the ownership of said person and stating their legal form; and

(9) such other information as the administrator or the city council may direct.

(b) Annual opinion survey report. The franchisee shall prepare and submit to the administrator, by August 31 of each year or such other date as set by the administrator, the results of an opinion survey which shall identify the satisfaction and dissatisfaction among the franchisee's subscribers and the cable-related needs and interests of the Alexandria community that are being met and those that are not being met by the franchisee. The opinion survey shall be conducted in conformance with such requirements, including supervision, as the administrator and the city council may direct.

(c) Annual plant survey report. The franchisee shall prepare and submit to the administrator, by August 31 of each year or such other date as set by the administrator, a complete survey of and a full report on its plant. The purpose of the report shall be to assure the city that the technical standards of the FCC are being maintained. This plant survey shall include appropriate electronic measurements and shall be conducted in conformance with such requirements, including supervision, as the administrator and the city council may direct.

(d) Special reports and documents. A franchisee shall deliver the following special reports and documents. Unless otherwise specified in the subsections below, these reports and documents shall be delivered to the administrator within five days of their completion, filing or receipt by, or on behalf of, the franchisee.

(1) A report shall be prepared and submitted to the administrator bimonthly that describes any cable system construction that is ongoing, including any system rebuild.

(2) Any notice of deficiency or forfeiture or any other document issued by any state or federal agency instituting an investigation or a civil or criminal proceeding regarding the cable system, the franchisee or any affiliate of the franchisee, to the extent the same may affect the franchisee's operations in the city, shall be filed with the administrator.

(3) Any petition or request for protection under bankruptcy laws filed by or on behalf of, or any judgment related to a declaration of bankruptcy by, the franchisee or any person holding more than a twenty percent ownership interest in the franchisee shall be filed with the administrator.

(4) Any report or other document containing or discussing technical tests, or the results of such tests, required by the city as specified in this chapter or a franchise agreement shall be filed with the administrator.

(5) A report shall be filed with the administrator within 30 days of the end of each calendar quarter, stating the number of service calls, by type of service requested, received by the franchisee during the prior quarter and, for each type of service, the percentage of service calls compared to the subscriber base.

(6) A report shall be filed with the administrator within 30 days of the end of each calendar quarter, (i) stating the number of outages and service degradations that occurred during the prior quarter, (ii) identifying separately each planned outage that occurred during the quarter, the time it occurred, its duration and the estimated area and number of subscribers affected, (iii) identifying each unplanned outage or

service degradation that occurred during the quarter, the time it occurred, its duration and the area and number of subscribers affected, and (iv) stating the total hours of outages and service degradations, the total number of viewing hours that subscribers lost due to the outages and degradations (i.e., hours of outages and degradations multiplied by the number of subscribers affected), and the percentage such viewing hours were of the total potential subscriber viewing hours during the quarter.

(e) General reports. A franchisee shall prepare and file with the administrator, at the times and in the form prescribed by the administrator, such additional reports with respect to the franchisee's operations, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the city in connection with this chapter or the franchise agreement.

Sec. 9-3-154 Records required.

(a) A franchisee shall at all times maintain:

(1) records of complaints received. The term "complaints" as used herein and in this chapter refers to any written or verbal statement of dissatisfaction with one or more aspects of a cable system, including service outages, the technical quality of video transmissions, and the performance by franchisee's employees, but not including the quality or nature of programming, that a franchisee receives in its administrative offices or in the field from a subscriber, whether or not the complaint requires a service call;

(2) a full and complete set of plans, records and "as built" maps showing the exact location of all cable system equipment installed or in use in the city, exclusive of subscriber service drops;

(3) records of service outages, indicating date, duration, area and the estimated number of subscribers affected, type of outage, and cause;

(4) records of service calls for repair and maintenance, indicating the date and time service was requested, the date of acknowledgement, the date and time service was scheduled (if it was scheduled), the date and time service was provided, and (if different) the date and time the problem was solved; and

(5) records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.

(b) A franchisee shall maintain records and provide information in addition to the records and information specified

in subsection (a) as are reasonably required by the administrator.

Sec. 9-3-155 Performance evaluation.

(a) The city may, at its discretion, hold performance evaluation sessions. All such evaluation sessions shall be open to the public.

(b) Topics that may be discussed at an evaluation session may include, but are not limited to, cable system performance and construction, franchisee compliance with this chapter and a franchise agreement, customer service and complaint response, subscriber privacy, services provided, programming offered, service rate structures, franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.

(c) During the review and evaluation by the city, a franchisee shall cooperate with the city and shall provide such information and documents as the city may need to reasonably perform its review.

Sec. 9-3-156 Voluminous materials.

If any books, records, maps, plans or other documents requested from a franchisee by the city are too voluminous to copy or move, or for security reasons cannot be moved, then a franchisee may request that the city's inspection take place where such documents are located rather than at a location designated by the city, provided that the franchisee must (i) make necessary arrangements for copying, at its sole expense, the documents selected by the city after review, and (ii) pay all transportation, lodging and other travel-related expenses incurred by the city in inspecting the documents or having the documents inspected by its designee where the documents are located. The parties agree that any payments made by the franchisee under this section are not a franchise fee and fall within one or more of the exceptions in the Cable Act, 47 U.S.C. § 542(g)(2).

Sec. 9-3-157 Retention of records; relation to privacy rights.

A franchisee shall take all reasonable steps to ensure that it is able to provide the documents and information which must be provided or may be requested under this chapter or a franchise agreement, including by providing appropriate subscriber privacy notices. Nothing in this section shall be read to require a franchisee to violate the Cable Act, 47 U.S.C. § 551. A franchisee shall be responsible for redacting from documents any data that federal law prevents it from providing to the city. Unless otherwise required by federal law, records required to be

complied by this chapter shall be maintained by a franchisee for at least five years.

ARTICLE K

Consumer Protection Provisions

Sec. 9-3-171 *General provisions.*

A franchisee shall comply with the customer service standards set forth in this article. A franchisee shall also comply with any additional or stricter customer service standards or requirements established by federal or state law or regulation. Nothing in this article shall relieve a franchisee of its obligation to comply with applicable consumer protection laws.

Sec. 9-3-172 *Telephone and office availability.*

(a) A franchisee shall maintain an office at a convenient location in the city that shall be open during the hours of 8:00 a.m. to 9:00 p.m., Monday through Friday, 8:00 a.m. to 5 p.m. on Saturday, and, if found by the administrator to be reasonably necessary, 12:00 p.m. to 5:00 p.m. on Sunday, to allow subscribers to request service, pay bills and conduct other business. A franchisee shall perform service calls, installations and disconnects during at least the hours 8:00 a.m. to 8:00 p.m., Monday through Saturday, and shall respond to outages 24 hours a day, seven days a week. A franchisee shall establish a publicly-listed, local toll-free telephone number. The phone at such number must be answered by customer service representatives at least during the hours of 8:00 a.m. to 8:00 p.m., Monday through Saturday, for the purpose of receiving requests for service, inquiries and complaints from subscribers. After those hours, a franchisee shall arrange for the phone to be answered so that customers can register complaints and report service problems on a 24-hour per day, seven-day per week basis, and so that the franchisee can respond to service outages as required herein.

(b) Telephone answering time shall not exceed 30 seconds, and the time to transfer a call to a customer service representative, including hold time, shall not exceed an additional 30 seconds. This standard shall be met 95 percent of the time, measured quarterly. Under normal operating conditions, customers shall receive a busy signal less than three percent of the time. When the business office is closed, an answering machine or service capable of receiving and recording service complaints and inquiries shall be employed. The after-hours answering service shall comply with the same telephone answer time standards set forth in this subsection. Upon request of the administrator, a franchisee shall supply statistical data to verify that it has met the standards set forth in this subsection.

(c) A franchisee shall hire sufficient staff fluent in both Spanish and English so that it can adequately respond to customer inquiries, complaints and requests for service in its office, over the phone and at a subscriber's residence.

Sec. 9-3-173 Scheduling work.

(a) All appointments for service, installation or disconnection shall be specified by date. A franchisee shall identify a specific time at which the work shall be done, or offer a choice of time blocks which shall not exceed four hours in length. A franchisee shall also, upon request, schedule service installation calls outside normal business hours, for the convenience of the customer, provided the customer pays a reasonable additional charge for such service. If, at any time, an installer or technician believes it impossible to make a scheduled appointment time, an attempt to contact the subscriber shall be made prior to the time of appointment, and the appointment shall be rescheduled at a time convenient to the subscriber.

(b) Subscribers who have experienced two missed appointments due to the fault of a franchisee, if the appointment was for installation, shall receive installation free of charge or other cable services of comparable value; if such installation was to have been free of charge or if the appointment was for a reason other than installation, subscribers shall receive three months of the franchisee's most widely subscribed-to service tier free of charge or other cable services of comparable value.

(c) With regard to mobility-limited subscribers, upon their request, a franchisee shall arrange for pickup and/or replacement of converters or other franchisee equipment at the subscribers' address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

(d) Requests for service, repair and maintenance must be acknowledged by a trained customer service representative of the franchisee within 24 hours or prior to the end of the next business day, whichever is earlier. A franchisee shall respond to all other inquiries, including billing inquiries, and to all complaints within five business days of the inquiry or complaint.

(e) Standard installations made within 125 feet of a franchisee's existing distribution system shall be completed within seven business days after the order is placed. Other installations shall be commenced as soon as reasonably possible after the order is placed and thereafter diligently pursued to completion. Repairs and maintenance for service interruptions and other repairs not requiring in-unit work must be commenced within 24 hours of the subscriber request or complaint, and thereafter diligently pursued to completion. Work on all other requests for service shall be commenced by the close of the next

business day after notification of the service problem, and shall be completed within three days from the date of the initial request. Where, for reasons beyond the franchisee's control, service work cannot be completed within the specific time period set out in this subsection even with the exercise of all due diligence, the franchisee shall complete the work in the shortest time reasonably possible. Except as federal law requires, no charge shall be made to a subscriber for repairs or maintenance work by a franchisee, except for the cost of repairs to the franchisee's equipment or facilities where it can be documented that the equipment or facility was damaged by the subscriber.

(f) A franchisee shall not cancel a service or installation appointment with a customer after the close of business on the business day immediately preceding the appointment.

(g) The standards set out in subsection (d) and in subsection (e) shall be met by a franchisee at least 95 percent of the time, measured on a quarterly basis.

Sec. 9-3-174 Notice to subscribers.

(a) A franchisee shall provide each subscriber, at the time cable service is installed and at least once a year thereafter, written instructions for placing a service call, filing a complaint or requesting an adjustment. As part of the notice provided at the time of installation, the franchisee shall provide the telephone number of the city office responsible for receiving customer complaints, a schedule of rates and charges, a statement of channel positions, a description of programming services, a copy of the service contract between the franchisee and the subscriber, a description of delinquent subscriber disconnect and reconnect procedures, and a description of other franchisee policies and procedures that may affect its subscribers. Copies of the installation and the annual notice shall be provided to the administrator. Except as otherwise provided below in article L, a franchisee shall provide the administrator and all subscribers at least 60 days' prior notice of any significant changes in the information that is required by this subsection to be provided to subscribers. Such notice shall be in writing, either delivered or mailed to subscribers and the administrator, and by announcement on the cable system.

(b) A franchisee's promotional materials, announcements and advertising of residential cable service to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials shall clearly and accurately disclose price terms. In the case of telephone orders, a franchisee shall take reasonable steps to ensure that price terms are clearly and accurately disclosed to potential customers.

(c) A franchisee shall maintain a file containing a copy of each notice provided to subscribers as required by this article, as well as a copy of each promotional offer made to subscribers.

Sec. 9-3-175 Interruptions of service.

A franchisee may intentionally interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations, only after a minimum of 48 hours prior notice to subscribers and the administrator of the anticipated service interruption; provided, that planned maintenance that does not require more than two hours interruption of service and that occurs between the hours of 12:00 a.m. and 6:00 a.m. shall not require any notice to subscribers, and notice of such interruption to the administrator may be given at least 24 hours prior to the anticipated service interruption.

Sec. 9-3-176 Billing.

(a) A franchisee's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit.

(b) A franchisee's billing statement shall be clear, concise and understandable, shall itemize each category of service and equipment provided to the subscriber, and shall state the charge for each such category of service and equipment.

(c) A franchisee's billing statement shall show a specific payment due date that is the later of (i) 20 days after the date the statement is mailed, or (ii) the fifteenth day of the month in which the service being billed is rendered.

(d) A franchisee's billing statement shall notify subscribers that they can remit payment in person at the franchisee's office in the city and shall state the address of that office.

(e) Subscribers shall not be charged a late fee or otherwise penalized for any failure by a franchisee, including a failure to timely or correctly bill the subscriber or to properly credit the subscriber for a payment timely made.

(f) The account of any subscriber shall be credited a prorated share of the monthly charge if the subscriber is without service or service is substantially impaired for any reason for a period exceeding four hours during any 24-hour period, except where the franchisee can show that the service outage or impairment was caused by the subscriber or was part of a planned outage that occurred between the hours of 12:00 a.m. and 6:00 a.m.

(g) A franchisee shall respond to all written billing complaints from a subscriber within 30 days of its receipt of the complaint.

(h) Refund checks to subscribers shall be issued no later than (i) the earlier of the subscriber's next regular billing date or 30 days following resolution of the refund request, or (ii) where service has been terminated, the date on which all equipment has been returned to the franchisee.

(i) Credits for service shall be issued no later than the subscriber's next regular billing date after the determination that a credit is warranted.

Sec. 9-3-177 Disconnection/downgrades.

(a) A subscriber may terminate service at any time.

(b) A franchisee shall promptly disconnect from its cable system, or downgrade the level of service of, any subscriber who so requests. No period of notice prior to voluntary termination or downgrade of service may be required of subscribers by a franchisee. No charge may be imposed for any voluntary disconnection, and downgrade charges must comply with the requirements of federal law. So long as the subscriber returns equipment necessary to receive a service within five business days of the disconnection, no charge may be imposed by a franchisee for any cable service delivered after the date of the disconnect request.

(c) A subscriber may be asked, but not required, to disconnect a franchisee's equipment and return it to the franchisee's business office.

(d) Any security deposit and other funds due a subscriber shall be refunded on disconnected accounts after the converter has been recovered by the franchisee. Any refund to which a subscriber who has requested service disconnection is due shall be received by the subscriber no more than 30 days following the date on which the franchisee received the disconnection request.

(e) If any subscriber fails to pay a monthly subscriber or other fee or charge, a franchisee may disconnect the subscriber's service outlet; provided, that no such disconnection shall be effected until after 45 days from the due date of the monthly subscriber fee or other charge, and after 10 days from the subscriber's receipt of written notice of the franchisee's intent to disconnect following expiration of such 45-day period. If the subscriber pays all amounts due, including late charges and any special charges of which the subscriber has been notified, before the date scheduled for disconnection, the franchisee shall not disconnect service. After disconnection, upon payment by the subscriber in full of all due fees or charges, including any

reconnection charge, the franchisee shall promptly reinstate service.

(f) A franchisee may immediately disconnect a subscriber if the subscriber is damaging or destroying the franchisee's cable system or equipment. After disconnection, the franchisee shall restore service after the subscriber provides adequate assurance that the subscriber has ceased the practices that led to disconnection, and after the subscriber has paid all proper fees and charges, including any reconnect fees and any amounts owed the franchisee for damage to its cable system or equipment.

(g) A franchisee may disconnect a subscriber who causes signal leakage in excess of federal limits. It may do so after five days written notice to the subscriber, if the subscriber fails to take steps to correct the problem. It may also do so without notice, provided that, immediately after the disconnection, the franchisee notifies the subscriber of the problem and, once the problem is corrected, reconnects the subscriber without charge.

(h) Except as federal law may otherwise provide, a franchisee shall remove its property from a subscriber's premises within 30 days of the termination of service, whether the termination is voluntarily or involuntarily. If a franchisee fails to remove its property in that period, the property shall be deemed abandoned.

Sec. 9-3-178 *Changes in service.*

In the event a franchisee decides to alter the service (e.g., by retiering or restructuring service) that it provides to a class of subscribers, it shall provide each subscriber a 60 days advance notice that explains the substance and full effect of the alteration and provides to the subscriber the right within the sixty-day period to select any combination of services offered by the franchisee. Except as federal law otherwise provides, a subscriber may not be required to pay any charge (other than the regular service fee), including an upgrade or downgrade charge, in order to receive the services selected; provided, that the franchisee may impose its regular installation charge if installation work is required by a subscriber's selection of services. No charge may be made for any service or product that a subscriber has not affirmatively selected. A subscriber's payment of the regular monthly bill shall not in and of itself constitute an affirmative selection of a service or product.

Sec. 9-3-179 Deposits.

A franchisee may require a reasonable, non-discriminatory deposit on equipment that is provided to subscribers.

Sec. 9-3-180 Parental control option.

A franchisee shall provide control devices to any subscriber who wishes to be able to block the video or audio portion of any, or any channels of, cable service programming entering the subscriber's home. This control option shall be provided at no charge, except as federal law may otherwise provide.

Sec. 9-3-181 Exclusive contracts and anti-competitive acts prohibited.

(a) Except as otherwise provided by federal law or a franchise agreement, a franchisee shall not enter into an exclusive contract for the provision of cable service with any person, or demand the exclusive right to serve a person or location as a condition of extending service.

(b) A franchisee shall not engage in acts that have the purpose or effect of limiting competition for the provision of cable service or services similar to cable service in the city, except for such actions as are expressly authorized by federal or state law.

ARTICLE L

Rate Regulation

Sec. 9-3-201 Scope and applicability.

(a) This article governs the regulation of rates and charges for basic cable service and equipment within the city for any franchisee which has been notified that (i) the city has been certified by the FCC to regulate its basic cable service and equipment rates and charges, and (ii) the city has adopted regulations governing the regulation of basic cable service and equipment rates and charges. The provisions set forth in this article are intended to be consistent with all regulations of the FCC governing the regulation of basic cable service rates and equipment charges, and the city will regulate and interpret the provisions of this article so that they are consistent with such regulations, as if the regulations were set forth herein. A franchisee is prohibited from engaging in any activity which it is prohibited from engaging in under the regulations of the FCC.

(b) For purposes of this article, the term "equipment" means all equipment and services subject to regulation under 47 C.F.R. § 76.923.

Sec. 9-3-202 Local regulatory framework.

(a) The city shall regulate all rates and charges for cable service imposed on subscribers by a franchisee, except to the extent the city is prohibited from doing so by law, and no such rate or charge may be imposed or increased without the prior approval of the city except such rates and charges that the city is prohibited from regulating. Subject to the foregoing, the imposition of any rate or charge for cable service, or the increase in any such rate or charge, without the prior approval of the city shall be illegal. A franchisee is prohibited from requesting or requiring a subscriber to pay an illegal rate or charge as a condition of providing cable service.

(b) All rates and charges that are subject to regulation by the city must be reasonable. The city may, by ordinance or by regulation proposed by the city manager and approved by council, adopt such rules, procedures and standards as it deems necessary to implement rate regulation.

(c) By its acceptance of a franchise, a franchisee agrees that no costs associated with franchise obligations that are in effect on the date the franchisee is notified that it is subject to rate regulation may be passed through to subscribers in any form.

(d) In addition to any filing fees imposed for rate filings by this chapter, a franchisee shall pay the reasonable out-of-pocket costs incurred by the city in conducting rate regulation for the franchisee, including but not limited to consultants' fees and costs. By its acceptance of a franchise under this chapter, a franchisee agrees that such filing fees and consultants' fees and costs are not franchise fees, but fall within one of the exceptions in the Cable Act, 47 U.S.C. § 542(g)(2).

Sec. 9-3-203 Schedule of rates, rules and regulations.

A franchisee shall prepare and file with the administrator a schedule of rates and charges for all services offered to the subscribing public under its franchise. The schedule shall state the cost of each offered service or combination of offered services, together with all rules and requirements affecting the installation, maintenance and provision of service or which otherwise affect the quality or cost of service to a subscriber. The schedule shall be printed and filed in the form and manner specified by the administrator and within the time periods set out in section 9-3-207. The schedule shall be made available for public inspection during normal business hours, in an accessible and convenient place in the offices of the franchisee. Copies of the schedule shall be provided to subscribers in accordance with section 9-3-204.

Sec. 9-3-204 Notice to subscribers.

(a) A franchisee shall provide each subscriber, at the time cable service is installed and at least once a year thereafter, written instructions for placing a service call, filing a complaint or requesting a billing adjustment. As part of the notice provided at installation, a franchisee shall provide the telephone number of the city officer responsible for receiving customer complaints, a schedule of rates and charges for cable service and equipment, a statement of channel positions, a description of programming services, a copy of the service contract between franchisee and the subscriber, a description of delinquent subscriber disconnect and reconnect procedures, and a description of other franchisee policies and procedures that may affect its subscribers. Copies of the installation and the annual notices shall be provided to the administrator.

(b) A franchisee shall maintain a file containing a copy of each notice provided to subscribers under this section. This file shall be available for inspection upon the request of the administrator.

Sec. 9-3-205 Departure from schedules prohibited.

No rate or charge shall be made or billed to a subscriber, nor shall any service be provided, by or on behalf of a franchisee unless the franchisee has prepared and filed the schedule as required by section 9-3-203. Except under circumstances as may be specified in its schedule, a franchisee shall not impose, collect or receive any rates or charges other than those specified in its schedule. Nor shall a franchisee refund or remit, in any manner or by any device, any portion of compensation received from a subscriber or confer any special privilege or concession upon a subscriber, except as may be specified in its schedule.

Sec. 9-3-206 Discrimination and preferences prohibited.

A franchisee shall not, by a special rate schedule, rebate, concession or any other device or practice, impose upon or collect from any subscriber, directly or indirectly, rates or charges that differ from the rates and charges that the franchisee imposes upon and collects from other subscribers for a like and contemporaneous service under substantially similar circumstances or conditions; provided, that this section shall not be construed to prohibit the establishment of special rates or charges for subscribers who are 65 years of age or older or are handicapped persons, or the establishment of other special rates or charges that are permitted by law.

Sec. 9-3-207 Establishment of rates, charges and rules.

(a) A franchisee's initial schedule of rates, charges and other matters, required by section 9-3-203, shall be filed with the administrator within 60 days of the commencement of service by the franchisee. If a franchisee is providing services on the effective date of this section, it shall file the required schedule with the administrator within 30 days after the effective date of this section.

(b) No change shall be made in the rates, charges and other matters set out in a schedule required by section 9-3-203 and filed with the administrator, except upon not less than 60 days notice to the administrator and each subscriber; provided, that the administrator may, by general regulation or in particular instances, permit changes to be made on lesser notice to correct errors, to provide special or new service, or to address special emergency conditions. Notice of a proposed change in the rates, charges or other matters set out in a schedule shall consist of a statement which shall describes each matter as to which a change is proposed, the manner in which the current schedule treats the matter, the change that is proposed and the reason for the proposed change.

(c) Any proposed change in a schedule of rates, charges and other matters filed with the administrator shall be examined by the administrator for compliance with the requirements of the franchise, this chapter, applicable federal law and FCC regulations, and any specifications established by the administrator governing form. The administrator shall inform the franchisee filing the proposed change, no later than 20 days prior to the effective date of the proposed change, that it is or is not in compliance with such requirements. If found to be not in compliance, the proposed change in the schedule of rates, charges and other matters shall be rejected and returned to the franchisee with a statement of the reasons for the rejection, and thereafter any action implementing the proposed change shall be unlawful, null and void. Any such rejection may be appealed to city council pursuant to section 9-3-215.

Sec. 9-3-208 Filing and review of rates and charges.

(a) Rate filings by franchisee.

(1) If a franchisee is notified by the city that its basic service and equipment rates and charges are subject to regulation, it shall file a submission ("rate filing") within 30 days of the notification, justifying its then-existing basic service and equipment rates and charges. All such rates and charges, for all customer classifications, shall be justified. Once a franchisee has been notified by the city that its basic service and equipment rates and charges are subject to regulation, it may not thereafter increase any such rates or

charges without the prior approval of the city. This prohibition applies in all cases, including rate and charge increases announced but not implemented prior to the date of the city notice informing the franchisee that its rates and charges are subject to regulation. In addition to its initial rate filing, franchisee shall file a rate filing for any increase in basic service or equipment rates and charges, and for any new basic service or equipment rate or charge (collectively, a "rate increase"). An "increase" occurs when there is an increase in rates or charges, or a decrease in program or customer services without a corresponding decrease in rates or charges. Rate filings proposing a rate or charge increase shall be filed at least 30 days in advance of the proposed effective date of the increase. This requirement does not alter or eliminate any other notice requirement.

(2) Every rate filing shall be filed with the city's office of citizen assistance, and shall be considered filed on the date that the original and three copies of the filing (including all supporting materials) are received by that office. Information that the franchisee claims is proprietary under section 9-3-213 must be clearly identified and segregated from the remainder of the filing so that the city may determine the manner in which it was used by the franchisee in setting rates.

(3) Subject to any FCC rules governing the burden of proof, a rate filing submitted by a franchisee shall demonstrate that the rates and charges being proposed for basic service and equipment are reasonable. Except as inconsistent with FCC rules:

(i) The rate filing shall state in a cover letter whether it addresses the existing rates and charges of the franchisee or a proposed increase in the franchisee's rates and charges, and shall contain a brief, narrative description of the existing or the proposed increase in rates and charges. The letter shall also identify any rate that is based, in whole or in part, upon cost of service, and identify any pages of the rate filing that contain information that the franchisee claims is proprietary. If the filing proposes an increase in rates or charges, the cover letter shall also state whether any part of the proposed increase is based on an inflation adjustment or an increase in external costs.

(ii) The pages of the rate filing shall be numbered sequentially.

(iii) The rate filing shall contain all applicable FCC forms which shall be correctly completed.

(iv) If the rate filing proposes, for different classes of customers, different rates or charges for basic service, it shall demonstrate that the classifications of

customers and the differences in rates or charges are reasonable and consistent with federal law.

(4) Except as inconsistent with FCC rules:

(i) If a franchisee seeks to support a rate or charge based upon the cost of providing cable service, the city will establish a rate that provides the franchisee an opportunity to recover the reasonable costs associated with providing basic cable service, including a reasonable profit. An expense or investment shall not be presumed to be reasonable merely because the franchisee has incurred or made it.

(ii) If a franchisee seeks to justify all or any part of its rates or charges based upon the cost of providing cable service, then, in addition to information the city requires the franchisee to provide, and unless the city grants a waiver of this provision, the franchisee shall also submit a complete cost of service analysis that shows all expenses it incurs and all revenues derived from its cable system, directly or indirectly, by the franchisee or any person that constitutes a cable operator of the system within the meaning of the Cable Act, 47 U.S.C. § 522(5). This cost of service analysis shall identify the accounting level (as that term is used in the FCC regulations) at which each expense or revenue identified was aggregated, and shall show how the expense or revenue was allocated. The franchisee may not include costs at an accounting level unless it also includes the revenues from that same level that are attributable to the system or to a group of systems of which the system serving the city is a part. The cost of service analysis shall also identify the replacement cost of a comparable cable system and contain a justification for the identified figure. Further, the analysis shall identify the name and address of any person with which the franchisee has a contract, other than a programmer, and which derives revenues from the system, and shall state whether and how the revenues and costs of that person are included in the analysis. In addition, the analysis shall show the rate that is being proposed by the franchisee for each channel on the system and, for each such rate, the derivation of the rate and the application of the rate to yield a basic service rate. The analysis shall also show, for each of the items listed below, the manner in which the item was used in the derivation of the basic service rate:

- (A) operation and maintenance expenses;
- (B) administrative and general expenses;
- (C) programming expenses (identifying retransmission consent costs and copyright fees separately);
- (D) costs for public, educational and governmental access channel programming;

- (E) franchise fee expenses;
- (F) investment in the system and associated depreciation;
- (G) other expenses, including federal, state and local taxes, itemized; and
- (H) the proposed return on equity and the actual interest expense paid by the franchisee.

(iii) Notwithstanding the foregoing, a franchisee seeking to base its rates and charges upon the cost of providing cable service is not required to submit the cost of service analysis described in subsubsection (ii) of this section for equipment rates, and instead may complete, submit and support the costs of equipment using applicable FCC forms and presenting any other information the city deems necessary or appropriate, consistent with FCC regulations. The cost of service analysis submitted to justify basic service rates must show that it does not include equipment costs.

(b) City review.

(1) After receiving a rate filing, the office of citizen assistance shall publish a notice in a newspaper having general circulation in the city that the filing has been received and that, except for those parts which may be withheld as proprietary, it is available for public review. The notice shall state that interested parties may comment on the filing, and shall provide such parties at least ten calendar days from the date of the notice to submit written comments on the filing to the office. The office shall submit any comments it has received, along with the city manager's recommendations on the filing to the city council, and shall provide a copy of those comments and recommendations to the franchisee at least ten calendar days before the consideration of the filing by council. The franchisee may submit a response to the comments and recommendations no later than four calendar days before the date scheduled for consideration of the filing by council. The response shall be filed with the office of citizen assistance and, if submitted in a timely fashion, shall be forwarded to the council.

(2) After conducting a public hearing on the filing and within 30 days of the date of the rate filing, the city council shall issue a written order, which may be in any lawful form, approving the rates and charges proposed in the filing in whole or in part, denying the rates and charges in whole or in part, or tolling the rates and charges in whole or part. If the council takes the latter action, its order shall explain that it requires additional time to review the rate filing, shall identify any deficiencies in the franchisee's filing then known to the

council, and shall state that the franchisee may cure the deficiencies by submitting a supplemental filing as provided in subsection (c) of this section. With respect to a filing that addresses franchisee's existing rates and charges, tolling means that the rates and charges may remain in effect, subject to refund. With respect to a filing that proposes an increase in rates and charges, tolling means that the increase, or the portion thereof, that is tolled may not go into effect. If the council issues an order allowing the rates to go into effect subject to refund, the franchisee shall thereafter maintain an accounting in accordance with 47 C.F.R. § 76.933.

(c) Supplemental filing.

(1) If the city council tolls a rate filing in whole or in part, the franchisee shall file a supplemental filing within 20 days from the date the tolling order issues, containing corrections, if any, to its filing (including any required supplement to its cost of service analysis) and containing, at the option of the franchisee, a response to information and comments presented by interested parties or to the recommendations of the office of citizen assistance, or any additional information necessary to support the filing. A supplemental filing shall be filed in accordance with section 9-3-208(a)(2).

(2) A supplemental filing shall also contain such information, reasonably related to the issues addressed by the filing, as the city directs the franchisee to provide.

(3) In addition to information the city requires the franchisee to provide, unless the city grants a waiver of this provision, and except to the extent inconsistent with FCC rules, a franchisee seeking approval of a rate based, in whole or in part, upon the adjustments for inflation and external costs contemplated by 47 C.F.R. § 76.922(d)(1)-(2) shall submit, as part of its supplemental filing, the following:

(i) as to the adjustment for inflation, a statement relating it to the rates and charges for which the franchisee is seeking approval, and a calculation showing how the adjustment was made;

(ii) as to the adjustment for external costs, a statement relating it to the rates and charges for which the franchisee is seeking approval, and a calculation showing how the adjustment was made;

(iii) as to each external cost (as defined by FCC rules) for which the franchisee seeks an adjustment, a statement describing the make-up of the cost, and the amount of the cost for the two calendar years prior to the year in which the supplemental filing is made and for the portion of such year

prior to the date of the filing, and the projected amount of the cost for the remainder of such year and for the following calendar year;

(iv) if the filing seeks approval of rates and charges based, at least in part, upon one or more increases in programming service costs, the contract for each programming service whose cost has increased, a sworn statement identifying each programming service whose costs increased where the programmer is an affiliate of the franchisee (as defined by FCC regulations), the contract for each programming service whose cost has decreased over the two calendar years prior to the year in which the supplemental filing is made, and, for any contract for programming services that has been in effect less than 12 months, the prior contract for the services; and

(v) a sworn statement by the franchisee's chief financial officer or an independent, certified accountant that:

(A) states that the individual has examined all of the franchisee's external costs (including all programming costs) for the two years immediately prior to the supplemental filing and has offset against the claimed increase in those costs both the amount of any decreases in external costs incurred during such period and the amount by which the increase in external costs (net of such decreases) was below the Gross National Produce Fixed Weight Price Index (GNP-PI), as required by 47 C.F.R. § 76.922(d)(2);

(B) affirms that the franchisee is only seeking to recover external costs to the extent that such costs exceed the GNP-PI; and

(C) affirms that the franchisee has not attempted to recover any increase in the cost of programming purchased by an affiliate, except as authorized in 47 C.F.R. § 76.922(d)(2)(vi).

(4) Upon receipt of a supplemental filing, the office of citizen assistance shall promptly publish a notice in a newspaper with general circulation in the city that the filing has been received and that it is available for public review, except those parts which may be withheld as proprietary. The notice shall state that interested parties may comment on the filing, and shall provide interested parties twenty days to submit written comments on the filing to the office. The office shall submit the comments it receives, along with its recommendations on the filing to the city council, and shall provide a copy of those comments and recommendations to the franchisee at least twenty business days before the consideration of the filing by council. The franchisee may submit a response to the comments and recommendations no later than ten business days before the date scheduled for the council consideration of